FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF IRENE REINKING AND BERNARD REINKING

UPON THE PETITION OF
IRENE REINKING,

Petitioner/Appellee/Cross-Appellant,

AND CONCERNING
BERNARD REINKING,

Respondent/Appellant/Cross-Appellee.

Filed May 31, 1983

3-42
2-68350

Appeal from Fayette District Court, C. W. Antes, Judge.

Respondent-husband appeals and petitioner-wife cross-appeals from the decree dissolving the parties' marriage. AFFIRMED AS MODIFIED.

Gerald B. Carney of Laird & Carney, Waverly, for respondent-appellant.

James S. Updegraff, West Union, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

Hayden, J., takes no part.

OXBERGER, C.J.

Respondent-husband appeals and petitioner-wife cross-appeals from the decree dissolving the parties' marriage. On appeal, respondent-husband asserts (1) that the trial court's valuation of the parties' farm machinery and farm real estate were too high; (2) that the $170,000 cash property settlement awarded to petitioner-wife was excessive; (3) that respondent-husband's payments on the cash property settlement should have been spread over a period of time longer than ten years; (4) that the trial court exceeded its authority in providing for twelve percent annual interest on the cash property settlement; (5) that an equal division of the parties' assets and debts is inequitable because of respondent-husband's extraordinary contribution to the marriage; (6) that respondent-husband was awarded too few liquid assets to offset the debts he was required to pay; and (7) that the trial court did not follow the parties' pretrial stipulation when it awarded a certain farm to petitioner-wife. On cross-appeal, petitioner-wife asserts (1) that the cash property settlement was too small; (2) that an equal property division would be equitable; (3) that the trial court did not take into account in making its property division respondent-husband's government bonds and Federal Land Bank stock; and (4) that the trial court should have set a date by which respondent-husband was to repay the loans against the insurance policies petitioner-wife was awarded. We affirm as modified.

When Bernard and Irene were married at the end of 1956, Bernard's father rented the young couple 160 acres on favorable terms, provided machinery for the farm operation, and supplied them with a dairy herd and feed. Bernard and Irene were twenty-one and nineteen years of age at the time.

During the course of the marriage, Bernard managed the farming operation and Irene, who was not employed, confined her activities to homemaking.

The original farmstead was purchased by Bernard and Irene from Bernard's father, and other acquisitions of farm land resulted in the parties' owning 1385 acres at the time of trial.

In addition to assistance in the farming operation by Bernard's father, the parties' sons actively assisted their father. Bernard and Irene agree that the land accumulated by them should be preserved so that each of their sons may be provided with a start in farming.

At the time of trial, Irene was living in a house she had purchased for $65,000 and Bernard was living on the farm homestead.

Prior to commencement of the trial, the parties stipulated that Irene would receive the Gerkin farm consisting of 320 acres in Oran township and that Bernard would assume any debts on that land; that Irene would receive the house in which she was residing and that Bernard would assume any debts on that house; that Bernard would assume and pay all debts which Irene had contracted with the Qelwein State Bank; that Bernard would remit $25,000 to Irene upon entry of a decree in this case; that Irene would receive the household goods, personal effects and other personal property in her possession as well as her automobile free of all debts; and that Irene would not receive alimony. It should be noted that this stipulation was not in writing and that its terms were recited to the court. On direct examination, Irene testified that she would not know what to do with farm land and that in addition to the Gerkin farm and the house in which she was residing, she felt that a cash settlement of $172,000 would be fair.

The trial court concluded that the division of property would most equitably be resolved by dividing it equally between the parties. In addition to the house in West Gate and the Gerkin farm, the court awarded Irene the Swartz farm, which the court valued at $227,500. In order to equalize the awards, the court ordered

Bernard to pay Irene $25,000 within thirty days after filing of the decree and $170,000 to be paid over a period of ten years, with the first $17,000 installment to be paid within thirty days of the decree. Later installments were to be paid at twelve percent interest on all unpaid balances. The court further ordered Bernard to assume all debts and obligations owing on the Gerkin farm, the West Gate house, and the Swartz farm, as well as all debts and obligations owing to the Oelwein State Bank. The court awarded Bernard all other real estate owned by the parties, and ordered him to assume all mortgages owing thereon, including all interest due thereon, as well as all real estate taxes due and owing on any of the real estate covered by the decree. In addition, the court ordered Bernard to assume a life insurance loan of $30,600, and awarded him all agricultural equipment, all grain, certain collectors' automobiles, his life insurance, and his personal automobile, as well as other personal property in his possession. Under the trial court's valuations, the parties had a total net worth of $2,763,198 at the time of dissolution, of which Bernard received 46.9 percent and Irene 53.1 percent.

I. Scope of Review

Our review of dissolution proceedings is de novo. Iowa R. App. P. 4. We review the facts as well as the law, and, from the credible evidence, determine rights anew on those issues properly presented. In re Marriage of Horstmann, 263 N.W.2d 885, 888 (Iowa 1978). While we give weight to the trial court's findings of fact, especially with regard to credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. The Property Division

A division of the assets of the parties in a dissolution is based upon the guidelines set out in Schantz v. Schantz, 163 N.W.2d 398, 405 (Iowa 1968) and Iowa Code section 598.2 (1983), excluding consideration of fault. In re Marriage of Winter, 223 N.W.2d 165, 169 (Iowa 1974).

The overriding consideration in property division is equity. Nothing in the Code or in our precedents sanctions the division of the assets of the parties based upon any particular percentage formula, including one which would require an equal division between the parties. In re Marriage of Cooper, 225 N.W.2d 915, 919 (Iowa 1975); In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976).

Bernard argues that the trial court, in setting valuations on the parties' property and distributing the property and obligations, overlooked the fact that three days after entry of the decree, Bernard was obligated to remit $118,731 in real estate payments and a debt of $200,000 for a crop operating loan. He argues further that the court did not consider contingent obligations that Bernard had assumed as co-signer on notes of two of his sons in the amount of approximately $40,000.

In support of his contention that this court should modify the trial court's decree by awarding him the Swartz farm and reducing his cash payment to Irene from a total of $195,000 to $42,000, Bernard argues that although Irene made valuable contributions to the marriage as homemaker and through her care of the children, the success of the farming operation and the magnitude of the estate must be attributed directly to his own extraordinary farming and investment abilities and the contributions of his father. In addition, he argues that it is inequitable that he should be required to assume virtually all of the parties' debts, in an amount exceeding $1,300,000, particularly when he would be obligated to sell a significant portion of the land awarded to him in order to meet the obligations imposed upon him. He argues further that the property division ordered by the court places him in risk of financial ruin while Irene was awarded assets which give her lifetime economic security, a generous income, and virtually complete freedom from debt.

In In re Marriage of Callenius, 309 N.W.2d 510, 514-15 (Iowa 1981), the supreme court was faced with a situation which was markedly similar to this one.

The court there found that it was "equitable to order a property division in a manner which recognizes the risk of forfeiture and the considerable efforts which must be expended by respondent in avoidance of same." The court added, "we have previously recognized the reasonableness of a trial court awarding a farm to the spouse who operated it and in fixing the award and schedule of payments to the other spouse without reaching equality so the farmer-spouse might retain ownership of the farm." Id. at 515, citing In re Marriage of Andersen, 243 N.W.2d 562, 564 (Iowa 1976); In re Marriage of Briggs, 225 N.W.2d 911, 913 (Iowa 1975).

We believe that the division ordered by the trial court was inequitable. The stipulation entered into by the parties was clearly intended to leave the Swartz farm in the possesion of Bernard. Loading all of the debts upon Bernard and then adding to them by imposing upon him the responsibility of paying Irene $170,000 in addition to the $25,000 she was to receive under the stipulation effectively negated one of the terms of the stipulation, which was that she would not receive alimony. Beyond that, we find that these conditions impose upon him an intolerable burden of debt under the circumstances.

We therefore modify the decree by awarding the Swartz farm to Bernard and by reducing the $195,000 cash award to Irene to $95,000. Thus, Bernard will receive $1,624,032, or 58.8 percent, and Irene $1,139,166, or 41.2 percent of the parties' total marital assets of $2,763,198. This cash award is to be paid by Bernard to Irene within 90 days of the filing of this order.

III. Policy Loans

Irene's life insurance had a cash value of $9,751, but there were loans against this insurance. The trial court ordered Bernard to assume and pay any debts Irene may owe, but did not specifically refer to debts on insurance policies. Irene asks, on cross-appeal, that Bernard be required to pay the debts on these policies forthwith.

We believe that it is equitable for Bernard to be required to pay these debts, but in order to give him time to do so, in view of the other heavy obligations he

has, we order him to pay the debts on Irene's insurance policies no later than one year following the filing of this opinion.

The trial court's decree is affirmed in all other respects.

AFFIRMED AS MODIFIED.